

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
Connect America Fund

)
) WC Docket 10-90

**COMMENTS OF LAHARPE TELEPHONE COMPANY, INC. IN RESPONSE AND
OPPOSITION TO PRELIMINARY DETERMINATION OF 100% OVERLAP**

LaHarpe Telephone Company, Inc., (hereinafter LaHarpe), a Kansas corporation, in response to DA-15-868, released July 29, 2015, submits the following comments disputing the preliminary determination of the Wireline Competition Bureau that LaHarpe's study area is 100 percent overlapped by one or more unsubsidized competitors. LaHarpe Telephone Company, Inc., appears by counsel Thomas E. Gleason, Jr. and Mark Doty.

LaHarpe operates as an incumbent local exchange rate of return carrier serving approximately 300 residential, business and institutional customers in Allen County, Kansas under a state statutory obligation to provide service as carrier of last resort. See Kansas Statutes Annotated § 66-2009. LaHarpe is designated an Eligible Telecommunications Carrier by the Kansas Corporation Commission for state and federal universal service support. The SAC ID for LaHarpe is 411791.

DA-15-868 identified 277 census blocks in the LaHarpe service area and asserted there was a 100 percent overlap by competitive providers JMZ and Cox. JMZ offers fixed wireless voice and internet services to customers in the LaHarpe service area under the name of KwiKom Communications. Cox offers voice and data services, via cable technology, in only one census block in the LaHarpe service area. The record does

not reflect whether Cox's cable service is claimed to reach each residence in its single identified census block.

The July 29, 2015 Public Notice at paragraph 22 invites rate of return carriers identified as being 100 percent overlapped to submit evidence that an unsubsidized carrier does not offer service to either all census blocks or all locations within those blocks. The Public Notice suggests the online service availability tool of a competitor showing no service available for a particular area would be relevant to a final determination. Certainly the effective admission of no service by a competitor is relevant, alone demonstrating the absence of 100% overlap; there is no reasonable basis, however, to support the converse of this assumption, i.e., the assumption that a mere online map showing the existence of coverage is reliable.

Determination of service availability at specific locations, at least in the case of wireless service, is as much art as science. By way of comparison the Bureau and the Commission should consider caveats and limitations provided by mobile wireless carriers in connection with their respective claimed service areas.

AT&T Wireless provides an online tool to indicate its claimed coverage area at <http://www.att.com/maps/wireless-coverage.html>. A consumer clicking on an understated link labeled "Learn more," however, will encounter this separate text:

Important Information About This Coverage Map

This coverage viewer provides a predicted high-level approximation of wireless coverage. There are gaps in coverage that are not shown by this high-level approximation. Actual coverage may differ from map graphics and may be affected by terrain, weather, network changes, foliage, buildings, construction, signal strength, high-usage periods, customer equipment, and other factors. AT&T does not guarantee coverage. Our coverage maps are not intended to show actual customer performance on

the network, nor are they intended to show future network needs or build requirements inside or outside of existing AT&T coverage areas.

Similarly, the coverage map provided online by Verizon Wireless (at <https://vzwmap.verizonwireless.com/dotcom/coveragelocator/default.aspx?requestfrom=webagent>) is accompanied by this disclaimer:

These maps are not a guarantee of coverage and contain areas of no service, and are a general prediction of where rates apply based on our internal data. Wireless service is subject to network and transmission limitations, including cell site unavailability, particularly near boundaries and in remote areas. Customer equipment, weather, topography and other environmental considerations associated with radio technology also affect service and service may vary significantly within buildings.

Sprint likewise notifies consumers, on a web page separate from its online coverage map (<https://coverage.sprint.com/IMPACT.jsp?#!/>), of the limitations of its map's reliability:

Our coverage maps are high-level estimates when using your device outdoors under optimal conditions. Estimating wireless coverage and signal strength is not an exact science. There are gaps in coverage within our estimated coverage areas that, along with other factors both within and beyond our control (network problems, software, signal strength, your wireless device, structures, buildings, weather, geography, topography, etc.), will result in dropped and blocked connections, slower data speeds, or otherwise impact the quality of services.

Fixed-location wireless service is subject to the same physical limitations that affect mobile wireless signals and coverage. There is nothing of record to support an assumption that the competitor's online coverage map is definitive; it is rather a "best case" general illustration of where service may exist. This limitation is confirmed by a JMZ/KwiKom response to a potential customer inquiry presently appearing on the

KwiKom Facebook page: "Unfortunately service is not always available at every location *that is the nature of fixed wireless internet.*" (Emphasis added)

The service availability information publicly available from KwiKom is far from clear, having undefined different colors (likely indicating areas of questionable coverage) and indefinite boundaries. A close examination of this tool, however, reflects the existence of certain areas neither green (evidently intended to indicate coverage availability) or red (indicating questionable availability) within the LaHarpe study area, with such white areas acknowledging an absence of coverage and service capability.

Attached to these comments are copies of JMZ/KwiKom Communications's own service coverage maps obtained from that provider's website, showing no coverage or service availability at five separate household locations in five separate census blocks within the LaHarpe study area. Testing for purposes of validation at one of these locations confirmed the lack of service by JMZ/KwiKom. This competitor information alone is sufficient to reclassify LaHarpe as not having 100% overlap in light of the Bureau's guidance on evidence of no service set forth at ¶ 22, pp. 9-10 of the Public Notice of July 29, 2015:

Rate-of-return carriers identified on the preliminary list of 100 percent overlapped study areas also are free to submit evidence that an unsubsidized competitor does not offer service to all locations in the census blocks specified in the appendix and / or that the competitor is not offering service to all locations within those blocks. We note that the type of evidence that we found persuasive in the Phase I and Phase II challenge process to establish that service was not being offered in an area was evidence that a provider's online service availability tool showed "no service available" for particular addresses in the relevant area. In this context, such information would be relevant to our final determination.

Additionally, LaHarpe has identified ten other household locations within its study area, within seven additional census blocks, where no JMZ/KwiKom signal is capable of providing data rates of 10 Mbps downstream and 1 Mbps upstream; see the attached engineering report. For the latter ten locations JMZ/KwiKom's online coverage map indicates either questionable service availability or a claim that service is available, contrary to current actual signal strength measurements. The coordinates of each of these ten locations are specified on the spreadsheet filed herewith. None of these identified locations are in the single census block claimed to be served by Cox.

LaHarpe is a small, single-exchange company with limited resources, and the Public Notice at issue has given the company less than a month to address a preliminary finding that could pose serious threat to the company's continuing ability to provide ubiquitous affordable service. Even under these limitations LaHarpe has identified or developed substantial preliminary information contradicting the preliminary determination of overlap. This information, including JMZ/KwiKom's own public information, clearly shows that there is not a 100 percent overlap by any unsubsidized competitor or combination of competitors in the LaHarpe service area. A number of household locations identified in the attachments are served by neither JMZ nor Cox.

The LaHarpe study area is not 100 percent overlapped. In fact, of twelve census blocks reviewed, and within which JMZ/KwiKom claims to provide service, 100% are shown *not* to have service to all households. Of 171 census blocks in the LaHarpe study area containing one or more households, *at least 7%* are not overlapped.

The result of field testing and analysis of KwiKom's public information indicates reason for concern with any reliance on the initial assumptions used to reach the preliminary determination of 100% overlap. As noted in the Comments submitted August 27, 2015 in this proceeding by the Office of Economic Development of the Governor of Utah:

Under the current model, any census block that is partially covered would be considered fully covered, even if only a small percentage of households are covered. The FCC should consider revising data and mapping efforts in order to collect actual provider footprints so that on served residents are not denied services because they reside in a census block that is partially covered by broadband service....

... [A]lthough fixed wireless technologies offer a level of competition in the marketplace and may be used to cover areas which are difficult to reach, there are also some limitations in evaluating the actual percentages these technologies may cover. Current propagation models can indicate a likelihood of coverage but cannot guarantee coverage because visual obstructions, such as buildings and trees, can prevent certain households from being able to benefit from services.

It is clear that assumptions used to reach the preliminary determination of 100% overlap do not in fact support such a determination. That determination is critical to LaHarpe and its consumers, so the company is obliged to take on an added burden of disputing a determination not supported by fact.

In spite of the limited time and resources available to LaHarpe, the company has developed and now submits its information more than sufficient to overcome the preliminary determination of 100% overlap. That factually unsupported determination should be regarded as, at best, a "low bar" to overcome; LaHarpe's evidence is at least sufficient to preclude the potential from that determination that the company could be denied support necessary to continuing provision of service and recovery of prudent

investment made under then-existing policy to provide needed communications service to the public.

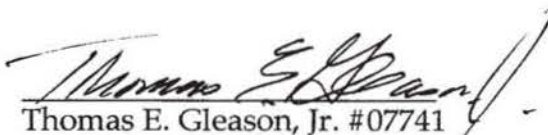
In addition to its insufficient factual support, a finding of present overlap coverage conflicts with public policy objectives. If the initial finding of 100% overlap as to LaHarpe were to be confirmed the result presently would be the governmentally imposed replacement of an existing ubiquitous carrier, closely regulated as to price and quality of service, by an unregulated fixed location voice/ data service monopoly under no obligation to assure continuing service or affordability. Even "stepped" reductions in LaHarpe's federal support would make the company's price-controlled voice and broadband services impossible to maintain, as LaHarpe operates under statutory restrictions preventing the company from accessing its other revenue sources to make up lost federal support. The vast majority of the company's existing customers, who have made the consumer choice not to utilize JMZ/ KwiKom service where it appears to be available, would be forced into accepting such service at whatever price and on whatever terms might be demanded by the remaining provider, the regulatorily imposed "only game in town."

Unconstrained by the presence of a regulated-rate alternative, JMZ/ KwiKom would have no incentive to maintain current rates and no need to assure availability of vital communications services at any rates, whether at new or existing locations. Even aside from the significant economic waste and potential taking through rendering LaHarpe's extensive fiber investment stranded and unrecoverable, the absence of

continuing restraints on an unregulated monopolist's service prices would soon aggravate rather than ameliorate gaps in broadband availability.

The paucity of supporting evidence, the existence of reliable evidence contrary to the preliminary determination, and the potential for disruption of affordable basic and advanced communications services are more than sufficient factors individually and taken together to warrant removal of LaHarpe Telephone Company, Inc. from the preliminary determination's list of carriers subject to 100% unsupported competitive coverage.

Respectfully submitted,



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